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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KALSHIEX, LLC,

Case No.: 25-cv-2152

Plaintiff,

DECLARATION OF XAVIER SOTTILE

vs.

MARY JO FLAHERTY, in her official capacity as Interim Director of the New Jersey Division of Gaming Enforcement; NEW JERSEY DIVISION OF GAMING ENFORCEMENT; JAMES T. PLOUSIS, in his official capacity as Chairman of the New Jersey Casino Control Commission; ALISA COOPER, in her official capacity as Vice Chair of the New Jersey Casino Control Commission; JOYCE MOLLINEAUX, in her official capacity as Commissioner of the New Jersey Casino Control Commission; NEW JERSEY CASINO CONTROL COMMISSION; and MATTHEW J. PLATKIN, in his official capacity as Attorney General of New Jersey,

Defendants.

DECLARATION OF XAVIER SOTTILE

1. I am the Head of Markets at KalshiEX, LLC. In that role, I am responsible for the generation of new markets. I received an undergraduate degree in Economics from Yale University in 2020. Before joining Kalshi, I worked at the U.S. House of Representatives, Bridgewater Associates, and the Yale Program on Financial Stability.

2. My duties include devising proposed new contracts and shepherding those proposals from inception to completion. I also facilitate the process by which our markets undergo the regulatory review cycle under the purview of the Commodity Futures Trading Commission (CFTC). This involves everything from personally notifying the CFTC of contracts that Kalshi has self-certified under Section 5c(c) of the Commodity Exchange Act and Section 40.2(a) of the CFTC regulations, to maintaining records pursuant to their requirements, certifying that Kalshi's contracts comply with the Act, and communicating with Commission staff over the substance of contract filings.

1 3. The facts set forth herein are within my personal knowledge, and if called as a
2 witness, I could and would competently testify to them.

3 4. I offer this declaration to describe the extraordinary harm that Kalshi and its users
4 will incur unless the court immediately prevents the Division from enforcing its demand that
5 Kalshi “take immediate corrective action” and cease offering any sports-based contracts in
6 New Jersey. Exhibit 1, at 2. Without an injunction, Kalshi will be forced into an impossible
7 choice. It must either decline to comply with the letter, subjecting itself and its representatives
8 to the risk of civil and possibly even criminal liability. Or it must attempt to comply with the
9 letter, thereby subjecting itself and its users to a host of harms that could not be repaired even if
10 Kalshi ultimately succeeds in this case. This declaration reflects my preliminary analysis of
11 Kalshi’s harms, and other unanticipated harms are possible, or even likely, given the uncharted
12 territory the Division’s letter would lead to.

13 **I. Harms Resulting from Noncompliance**

14 5. If Kalshi declines to comply with the letter and continues to offer event contracts
15 in the state of New Jersey, the company and its representatives risk civil, and possibly even
16 criminal, jeopardy in New Jersey.

17 6. New Jersey authorities have threatened Kalshi and its representatives with
18 criminal and civil liability for its operations in the state. The New Jersey Division of Gaming
19 Enforcement has expressed that it believes that Kalshi’s operations in New Jersey violate both
20 New Jersey statute N.J.S.A. 5:12A-11 and the state’s constitution. Violation of the New Jersey
21 statutory provision alone would constitute a “crime of the fourth degree” which is punishable
22 with “a fine of up to \$100,000” for corporations and “any other appropriate disposition,”
23 including imprisonment for corporate representatives, N.J.S.A. 5:12A-11(c), N.J.S.A. 2C:43-2.
24 Exhibit 1, at 2.

25 7. In its cease and desist letter, New Jersey authorities “reserve[d] the right to pursue
26 any appropriate sanctions” based on Kalshi’s alleged failure to adhere to New Jersey law.
27 Exhibit 1, at 2.
28

1 8. Since Kalshi's designation as a CFTC-regulated contract market in 2020, the
2 company has offered event contracts nationwide. As Head of Markets, I have assiduously
3 complied with federal regulations with regard to all our contracts, including the sports-related
4 contracts that New Jersey authorities have targeted in their letter. We have done our best to run
5 the company according to our understanding of the regulatory framework under which we have
6 been governed for almost five years.

7 9. Since receiving the cease-and-desist letter, Kalshi's operations that are lawful
8 under federal laws risk exposing the company and representatives to criminal and civil
9 liability. It is terrifying and stressful to attempt to operate the company while the risk of
10 criminal and civil jeopardy looms. I am deeply concerned that New Jersey will make good on
11 its threat to file charges against Kalshi and its representatives. That fear becomes all the more
12 distressing given that Kalshi's only other alternative is compliance with the cease-and-desist
13 letter, which would bring about a whole host of other harms to Kalshi and its users as I
14 describe below.

15 **II. Harms Resulting From Attempted Compliance**

16 10. Choosing to comply with the cease-and-desist letter would introduce a new set of
17 barriers and challenges that themselves would subject Kalshi and its users to irreparable harm.
18 Technical compliance with the cease and desist letter on short order will be exceedingly
19 difficult. But even if Kalshi could implement a technical solution to comply with the letter,
20 halting access to sports-based contracts in New Jersey will cause severe harm to Kalshi's
21 existing userbase. Compliance would also risk Kalshi's status as a designated contract market
22 under the CFTC, throwing away years of efforts to earn and maintain its federal designation.
23 All of these harms would be avoided by this Court's entry of immediate injunctive relief.

24 11. Kalshi's harms from attempting compliance can be categorized as follows: (a)
25 harms imposed by technical barriers to compliance, (b) harms to Kalshi's users from abruptly
26 ceasing operations in New Jersey, (c) risk that complying with New Jersey law would
27 jeopardize Kalshi's CFTC designation, and (d) economic and reputational harm to Kalshi from
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1 ceasing event-based contracts in New Jersey. I describe each of these categories in more detail
2 below.

3 *a. Harms Resulting from Technical Barriers to Compliance*

4 12. The cease and desist letter requires Kalshi to undertake technological changes that
5 would be either difficult or impossible for Kalshi to implement “immediate[ly],” as the letter
6 demands. Exhibit 1, at 2. Attempting to undertake these extraordinary technological changes
7 would impose substantial and irreparable costs that could not be recouped even if Kalshi
8 ultimately prevails in this case.

9 13. The Division’s letter requires Kalshi to “immediate[ly]” cease and desist from
10 offering any sports-based contracts in New Jersey. Exhibit 1, at 2. If Kalshi attempted to
11 comply with this demand, it would be required, first, to undertake efforts to geolocate which of
12 its users are in New Jersey, and, second, to cease immediately all sporting event-based
13 contracts for those users. I have engaged in internal discussions with our leadership and
14 technical team to determine the feasibility of compliance at both of these steps. Compliance
15 would be difficult to implement even under a relaxed timeline and nearly impossible to
16 implement “immediate[ly].” Exhibit 1, at 2.

17 *i. Step One – Identifying New Jersey Users*

18 14. Because Kalshi is subject to uniform federal regulation rather than state-by-state
19 laws, it currently lacks a mechanism to identify which of its users are located in any particular
20 state at any particular time. Implementing such a mechanism would be incredibly costly and
21 could not be done immediately.

22 15. Traditional web-based sports pools identify their users’ whereabouts through a
23 process called geolocation (or geo-positioning). Geolocation identifies and tracks an internet-
24 connected device’s location to provide real-time data as to the geographic position of the
25 device. This technology is more sophisticated than merely identifying the device’s IP address.
26 Instead, geolocation uses a combination of location-identifiers like GPS coordinates, cell phone
27 towers, WiFi access points, network connections, and Bluetooth beacons to triangulate
28

1 location. While IP addresses can provide city-level location accuracy, geolocation is sensitive
2 enough to track the exact moment that a device crosses state lines.

3 16. It is my understanding that geolocation is a multi-step and technically complex
4 process even for stationary devices, and that the process is even more challenging when
5 tracking real-time movement of devices.

6 17. The reason traditional sports pools deploy geolocation is to ensure that the bets
7 and wagers that individuals place in their pools conform to state laws governing gaming and
8 gambling. The precision of geolocation allows sports pools to make refined geographic
9 determinations at the transaction-level rather than the user-level. Through geolocation, a
10 company can allow and disallow certain transactions that take place in restricted areas rather
11 than bluntly denying gamblers access to their platforms based on their residence irrespective of
12 where they are located at the time of wager.

13 18. Kalshi is not a sports pool. As a CFTC-regulated contract market, Kalshi has
14 never developed or implemented geolocation on its platform because it is subject to the
15 CFTC's exclusive jurisdiction and is not subject to individual state laws governing gambling.
16 Like the Chicago Mercantile Exchange and the Intercontinental Exchange, Kalshi does not
17 distinguish between users or trades on the basis of geographic location. Instead, Kalshi is
18 subject exclusively to federal law, which does not apply different standards to users of different
19 states.

20 19. Federal law requires that Kalshi keep Know Your Customer (KYC) data on the
21 traders that place positions on its platform. In compliance with that requirement, Kalshi knows
22 the permanent residence and IP address of its users, but does not geolocate its users and
23 therefore does not know where a user's device is located at any point in time. Kalshi maintains
24 a database of its traders KYC data, which is available for CFTC inspection upon request.

25 20. Kalshi has no evident way to comply "immediately" with the cease-and-desist
26 letter. If Kalshi sought to use its existing KYC data to identify New Jersey-based users on its
27 platform, this broad-brush approach would risk being deemed both under- and over-inclusive.
28 KYC data would capture all users who claim their permanent residence as New Jersey even if

1 they place positions when they are located outside of New Jersey. Conversely, the KYC data
2 could fail to capture users whose permanent residence is outside of New Jersey but travel to the
3 state and place a position while there.

4 21. If, alternatively, Kalshi sought to implement geolocation services across its
5 platform, this process would be incredibly costly and time-consuming. Kalshi lacks the
6 capacity to implement this service in-house and would therefore need to contract with a cloud-
7 or server-based geolocation platform. I estimate that a partnership with a geolocation service
8 provider would cost Kalshi up to tens of millions of dollars annually. Thus, if it attempted
9 compliance with the Division's letter, Kalshi would be forced to expend enormous financial
10 resources on geolocating services, even if the court ultimately concludes that New Jersey law
11 does not apply to Kalshi.

12 22. Based on my prior negotiations with other key partners, moreover, I estimate that
13 negotiating a complex contract with a geolocation service provider alone could take months.
14 Implementing and integrating the geolocation services into our existing platform would take
15 longer still. Thus, attempting to comply with the Division's letter could not feasibly be done
16 "immediate[ly]" as the Division demands and, even if it could, would subject Kalshi to
17 massive irrevocable costs.

18 i. Step Two - Geographical Cessation

19 23. Only after identifying Kalshi users physically present in New Jersey could Kalshi
20 cease offering its event contracts to users in New Jersey. It would be required to do so through
21 a technical process called "geofencing." This process would involve creating a virtual
22 geographic boundary, or geofence, around the state of New Jersey. Again, this process would
23 be technically challenging, time-consuming, and expensive.

24 24. While geofencing might block *newcomers* from trading on the platform from New
25 Jersey, geographical cessation presents a host of additional difficulties for *existing* Kalshi
26 users. As of today, there are more than 45,000 accounts on Kalshi that have registered with a
27 New Jersey address and nearly 35,000 of those accounts have passed Know Your Customer
28 protocols and become full-fledged Kalshi members. While the precise numbers are not public,

1 these accounts have millions of dollars in open interest on the Kalshi platform, meaning New
2 Jersey users have millions worth of open positions on Kalshi markets that have not yet been
3 settled.

4 25. The Division's letter could be understood to require Kalshi to cease its contracts
5 even with respect to these existing positions. But doing so would present intractable technical
6 difficulties.

7 26. If the Division's letter is understood to require Kalshi to unilaterally liquidate all
8 trades that originated in New Jersey, compliance would either be impossible or irreparably
9 harmful. To explain why, it is helpful to distinguish Kalshi's exchange from a sports pool or
10 casino. A casino or sports pool operates by taking bets from gamblers on games where the
11 house has a statistical advantage. In other words, gamblers bet against the "house," and when
12 the house loses, it must pay the gambler on demand. Casinos and sports pools therefore
13 maintain a high level of liquidity so that they can pay out those bets.

14 27. But Kalshi does not operate a casino or sports pool. Instead, it manages a
15 federally regulated exchange market. In contrast to a casino, an exchange facilitates trades
16 between different users on the platform. Traders do not bet against the house, but rather enter
17 into contracts with other traders on an exchange. To ensure compliance with the CFTC
18 regulations, Kalshi operates a CFTC-approved derivatives clearinghouse that holds traders'
19 funds during the pendency of an open contract. But Kalshi does not have access to immediate
20 liquidity like a sports pool or casino that it could use to refund the cost basis of a trader's
21 investment. Attempting to facilitate those exits using Kalshi's own funds would be
22 exceptionally expensive and require technical capabilities that Kalshi does not now have.

23 28. Kalshi, moreover, would want to give its users reasonable notice to allow them to
24 exit their positions voluntarily if they so choose. But the immediate threat of criminal and civil
25 liability from New Jersey state authorities raises serious questions about whether Kalshi could
26 even engage in that basic diligence.

1 *b. Irreparable Harms to Kalshi's Users*

2 29. Ceasing operations in New Jersey would impose irreparable harm on Kalshi's
3 existing userbase. Ceasing operations could be understood to require either pausing current
4 trades pending the outcome of the event that is the subject of the contract, or else liquidating
5 user positions. Either option would impose severe harms on users.

6 i. Pausing Positions

7 30. Pausing current positions on Kalshi pending the outcome of the event at issue
8 would deny traders access to their property and threaten their economic expectations.

9 31. Pausing positions pending the outcome of the event would deny New Jersey users
10 access to their property—millions of dollars' worth. Users' capital would be locked on the
11 Kalshi platform and users with significant investments on the platform would be unable to
12 retrieve it. If the event at issue is months or years in the future, users' assets would be locked
13 up for the duration. Given current market conditions and uncertainty, this lack of access funds
14 could result in substantial losses.

15 32. Pausing positions would also cause a massive disruption to users' investment-
16 backed expectations. Financial traders on Kalshi, like investors in other markets, expect to be
17 able to alter their investments as facts on the ground change. Due to the unique market-
18 sensitivity of event contracts and the ease with which exchanges allow traders to place
19 positions, traders capitalize on the opportunity to enter and exit their positions during the
20 pendency of the contract. Traders also deploy well-recognized strategies like stop-loss orders
21 and portfolio-wide loss mitigation strategies. Investors may invest in a contract expecting to
22 sell if the contract price falls below a certain value, or expecting to reinvest more if the
23 investment proves especially sound. And while some contracts operate on short timelines,
24 many of the contracts that Kalshi offers are long-term.

25 33. Traders are constantly engaged in the practice of ascertaining risk. As facts on the
26 ground change so do traders' strategies. Indeed, traders often do not place a position on a
27 contract with the intent of seeing that contract through to its expiration date and risking the full
28 amount of the entry price. Instead, they monitor market fluctuations during the lifetime of the

1 event contract to determine when to cash out. In other words, traders do not necessarily value
2 event contracts based on the ultimate value of the contract at its expiration date. They also
3 value the flexibility that event contracts provide as a financial tool to mitigate risk in real-time.

4 34. Hitting pause on all New Jersey-based trades would completely upend this
5 investment strategy and destroy traders' expectations. If Kalshi were to pause all trades in New
6 Jersey, traders would no longer be able to take action on their existing contracts in accordance
7 with their investment models. The flexible investment opportunity on which Kalshi users relied
8 when entering into these contracts would be decimated. Traders would be forced either to leave
9 the state to change positions or suffer whatever losses they may endure as a result of being
10 locked out.

11 35. Pausing all New Jersey-based trades would not solely affect New Jersey-based
12 users and transactions; it would wreak havoc on the entire Kalshi exchange ecosystem. Again,
13 exchanges do not operate like casinos where gamblers bet against the house. Instead,
14 exchanges facilitate contracts between individual traders on the market. Traders on either side
15 of a contract are often from different states given that Kalshi does not distinguish between the
16 geographic location of traders. If traders in New Jersey are locked out of their positions, then
17 their trading counterparts in other states will likewise be limited in whether and how often they
18 can enter and exit their positions on the Kalshi exchange. Traders in New York, for example,
19 may expect to rely on traders in New Jersey for their contracts. But if the New Jersey-based
20 traders and transactions are all of a sudden restricted on the platform, that will have an equal
21 and opposite effect on the market for traders in other states. Pausing transactions in New Jersey
22 would thus disrupt user positions on the exchange nationwide, which they placed in reliance on
23 their ability to flexibly enter and exit.

24 ii. Liquidating Positions

25 36. Liquidating New Jersey-based positions on Kalshi would similarly subject users
26 to irreparable harm. This would require Kalshi to refund either the current value of users'
27 existing positions or the original cost of their existing positions on their open contracts.
28 Unilaterally settling traders' positions based on current market conditions or the original cost

1 of the positions could lead to significant losses for users. A trader, for example, may have
2 entered a long-term event contract at 80 cents, but market conditions may have caused his
3 position to decline in value to 30 cents. Rather than allowing the trader to ride out the market
4 dip, immediate liquidation at the market rate would force the trader to take a 50-cent loss on
5 the contract through no fault of his own. Likewise, a trader who bought a contract during a
6 market dip and is forced to exit at the original contract price would not be able to realize any
7 gains that he earned over his holding period for the contract. And in either event, refunding
8 users based either on the cost of their positions or the position's current value would be
9 prohibitively expensive for Kalshi to execute.

10 37. By the same token, immediately liquidating New Jersey-based users' positions
11 would disrupt the market for out-of-state users by causing a false signal in the market. Event
12 contract markets respond to market fluctuations. The immediate exit of a large portion of
13 investors on a particular contract would have a distorting effect on the value of the contract,
14 impairing other investors' ability to predict market changes and act accordingly. If, for
15 example, New Jersey traders make up a plurality of the trades on a particular contract, the
16 immediate liquidation of all New Jersey positions would indicate to the market that the
17 contract's value has changed, causing a price change in response. Remaining traders would
18 suffer from the market distortion, resulting in substantial financial losses even for Kalshi's
19 non-New Jersey users. Alternatively, Kalshi could liquidate the entire market for both New
20 Jersey and non-New Jersey users by settling prices at either the current market price or the
21 original contract price, but this would, again, be prohibitively expensive and likely occasion
22 the end of our federally-regulated company simply to stave off potential criminal or civil
23 liability.

24 *c. Harms to Kalshi Resulting from the Risk of CFTC Decertification*

25 38. Compliance with New Jersey state law would jeopardize Kalshi's status as a
26 CFTC designated contract market. It is difficult to overstate how harmful this would be to
27 Kalshi.
28

1 39. As the Head of Markets at Kalshi, I oversee the entire regulatory review process
2 for Kalshi's contract markets. In that role, I am responsible for ensuring that each of Kalshi's
3 contracts complies with the nearly two dozen CFTC Core Principles that govern event
4 contracts traded on CFTC-regulated exchanges. Complying with New Jersey state law could be
5 understood to put Kalshi out of compliance with these Core Principles, imperiling Kalshi's
6 designation as a contract market under the CFTC's purview.

7 40. CFTC Core Principle 4 charges designated contract markets with the
8 "responsibility to prevent manipulation, price distortion, and disruptions of the delivery or
9 cash-settlement processes." 17 C.F.R. § 38.250. Immediately liquidating or pausing traders'
10 positions could be understood to lead to the very sort of price distortion and market
11 manipulation that the CFTC regulations guard against. Pausing trades could cause "disruption[]
12 of the delivery or cash-settlement process" and immediate liquidation could cause "price
13 distortion."

14 41. CFTC Core Principle 2 requires that designated contract markets provide their
15 "members, persons with trading privileges, and independent software vendors with impartial
16 access to its markets and services." 17 C.F.R. § 38.151(b). Pursuant to this regulation, "access
17 criteria" must be "impartial, transparent, and applied in a non-discriminatory manner." *Id.*
18 Discrimination based on geographic location would at least arguably conflict with this
19 requirement, but that is exactly what Kalshi would have to do to comply with New Jersey's
20 cease and desist letter. Traders who execute positions in New Jersey will be barred from
21 accessing Kalshi's exchange and placing positions on Kalshi's contracts whereas traders in any
22 other state will have unlimited access to the platform.

23 42. Violation of these core principles could subject Kalshi to the panoply of
24 enforcement mechanisms that the CFTC has at its disposal. Those tools range from civil
25 monetary penalties to restitution to criminal liability.

26 43. Violating these principles could even jeopardize Kalshi's federal-contract-market
27 status with the CFTC. The CFTC is authorized to suspend or revoke Kalshi's designation if
28 Kalshi fails to comply with federal regulations. Kalshi has spent the better part of the last

1 decade working to gain federal registration as a contract market under the CFTC and has
2 scrupulously endeavored to comply with CFTC regulations to maintain that registration.
3 Losing our federal license would be catastrophic for the company, even if Kalshi were to
4 ultimately succeed in this suit against the state authorities in the long-term.

5 44. CFTC enforcement is not a mere theoretical risk. Several years ago, a CFTC-
6 regulated exchange was charged with offering contracts on a discriminatory basis because it
7 only allowed sportsbooks to trade on its platform. Discriminating on the basis of state
8 residence could likewise subject Kalshi to federal repercussions. It is inconceivable, for
9 example, to imagine a CFTC-designated contract market like the Chicago Mercantile
10 Exchange abruptly closing its exchange to users in a particular state without serious federal
11 repercussions. Yet that is what compliance with the Division's letter would require Kalshi to
12 do.

13 45. Compliance with New Jersey law thus places Kalshi in a regulatory Catch-22:
14 Either it complies with New Jersey law and risks CFTC sanctions or it continues operations in
15 New Jersey and subjects itself to state criminal and civil liability.

16 *d. Economic and Reputational Harms To Kalshi*

17 46. Compliance with New Jersey state law will also cause Kalshi economic and
18 reputational harm. Losses on both fronts will be irrevocable even if Kalshi ultimately wins this
19 case.

20 47. Kalshi has more than 45,000 users in New Jersey with millions of dollars invested
21 on the exchange. The market uncertainty created by abruptly closing its contracts in New
22 Jersey could lead many users to leave the platform—even users outside of New Jersey. Traders
23 must have confidence in the integrity of the market to invest in it, but market confidence would
24 be deeply shaken by Kalshi's compliance with the Division's order and the prospect that other
25 states may follow New Jersey's lead. Even if Kalshi were ultimately to prevail in this lawsuit,
26 regaining that market confidence would be difficult. Kalshi has expended enormous resources
27 to advertise its platform, onboard traders, and maintain their business. Losing those traders
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1 would mean that many of those efforts were for naught. Thus, compliance will impose
2 significant and irrevocable economic harm on the company.

3 48. The threat of New Jersey state litigation also endangers Kalshi's established
4 partnerships and relationships. One of Kalshi's banner partners, Robinhood, has already chosen
5 not to list Kalshi's event contracts in New Jersey as a result of a similar cease-and-desist letter
6 it received from New Jersey authorities. This marks a massive disruption for Kalshi given that
7 Robinhood had agreed to list Kalshi's contracts to its millions of active users, but chose to
8 deviate from that plan in direct response to the Division's letter. Other partners that help us
9 comply with CFTC regulations by facilitating our digital investment platform and helping to
10 detect improper trading behavior may also seek to limit their exposure given the uncertainty of
11 the application of New Jersey state law to Kalshi.

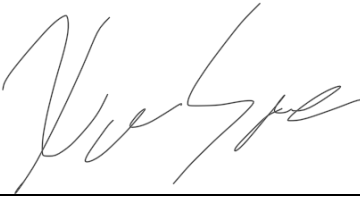
12 49. The effects of New Jersey's cease and desist letter are not limited to the state but
13 instead threaten to open a pandora's box of regulation for the 49 other states that may wish to
14 impose their local laws on Kalshi's exchange. In the absence of a temporary restraining order
15 and preliminary injunction, partners and users alike will be hesitant to engage with Kalshi
16 given this potential for state litigation.

17 * * *

18 50. The Division's cease-and-desist letter imposes irreparable harms that Kalshi
19 cannot avoid no matter how it responds. If Kalshi does not comply with the Division's
20 demands, the company faces civil and criminal liability and its representatives face nothing
21 short of imprisonment. But if Kalshi attempts to comply with the Division's demands, it would
22 incur massive costs, its users would be harmed, its federal registration would be imperiled, and
23 user confidence in the integrity of its market would be shaken. All of these harms are
24 compounded by the real risk that other states will be emboldened by the Division's demands to
25 follow New Jersey's lead. And there are serious questions about whether Kalshi could
26 implement the technical solutions on an expedited timeline. Kalshi has spent years cultivating
27 its reputation and developing its userbase. Compliance with the Division's demands to ward
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1 off New Jersey criminal and civil liability will lead to economic and reputational harm that will
2 be difficult to regain.

3
4
5 Dated this 28th day of March, 2025.



Xavier Sottile